



# Journal of the Senate

State of Indiana

115th General Assembly

Second Regular Session

Sixth Meeting Day

Wednesday Afternoon

January 16, 2008

The Senate convened at 1:18 p.m., with Senator David C. Long, in the Chair.

Prayer was offered by Senator Dennis K. Kruse.

The Pledge of Allegiance to the Flag was led by Senator Kruse.

The Chair ordered the roll of the Senate to be called. Those present were:

Alting	Long
Arnold	Lubbers
Becker	Meeks
Boots	Merritt
Bray	Miller
Breaux	Mishler
Broden <input checked="" type="checkbox"/>	Mrvan
Charbonneau	Nugent
Deig	Paul
Delph	Riegsecker
Dillon	Rogers
Drozda	Simpson
Errington	Sipes
Ford <input checked="" type="checkbox"/>	Skinner
Gard	Smith
Hershman	Steele
Howard <input checked="" type="checkbox"/>	Tallian
Hume	Walker
Jackman	Waltz
Kenley	Waterman <input checked="" type="checkbox"/>
Kruse	Weatherwax
Lanane	Wyss
Landske	Young, M.
Lawson	Young, R.
Lewis	Zakas

Roll Call 9: present 46; excused 4. [Note: A ☒ indicates those who were excused.] The Chair announced a quorum present. Pursuant to Senate Rule 5(d), no motion having been heard, the Journal of the previous day was considered read.

## SENATE MOTION

Madam President: I move that the Senate do now recess until 1:30 p.m., at which time the Senate will reconvene in the House chambers for the purpose of attending a joint convention of the Senate and the House of Representatives to receive the report of the Chief Justice of the Supreme Court in compliance with Article 7, Section 3 of the Constitution of the State of Indiana, which requires the Chief Justice to prepare and "submit to the General Assembly regular reports on the condition of the courts and such other reports as may be requested" and that following

adjournment of the joint convention, the Senate reconvene in the Senate Chamber upon the fall of the gavel.

LONG

Motion prevailed.

1:23 p.m.

The Senate recessed until the fall of the gavel for a Joint Convention with the members of the House of Representatives.

## RECESS

(The message of Chief Justice Randall T. Shepard, is recorded in the House Journal.)

The Senate reconvened at 2:31 p.m., with Senator Long in the Chair.

## REPORTS FROM COMMITTEES

### COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill 134, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill do pass. Committee Vote: Yeas 8, Nays 0.

BRAY, Chair

Report adopted.

### COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill 78, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill do pass. Committee Vote: Yeas 7, Nays 0.

BRAY, Chair

Report adopted.

### COMMITTEE REPORT

Madam President: The Senate Committee on Local Government and Elections, to which was referred Senate Bill 280, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

Page 3, line 14, delete "(if any)." and insert ".".

Page 4, line 30, delete "(if any)." and insert ".".

Page 5, line 31, delete "(if any)." and insert ".".

Page 7, delete lines 22 through 42.

Page 8, delete lines 1 through 17.  
 Page 14, delete lines 30 through 42.  
 Delete page 15.  
 Page 16, delete lines 1 through 20.  
 Page 17, delete lines 25 through 42.  
 Delete pages 18 through 91.  
 Page 92, delete lines 1 through 39.  
 Page 95, line 41, after "township;" insert "**or**".  
 Page 95, delete line 42.  
 Page 96, line 1, delete "(C)" and insert "**(B)**".  
 Page 96, line 34, delete "township assessors and".  
 Page 97, line 7, delete "the township assessor and".  
 Page 97, delete lines 27 through 42.  
 Delete pages 98 through 131.  
 Page 132, delete lines 1 through 32.  
 Page 135, line 4, delete "After" and insert "**If an ordinance is adopted and approved under IC 36-6-1.2-2, after**".  
 Page 135, delete lines 8 through 42.  
 Delete pages 136 through 138.  
 Page 139, delete lines 1 through 37.  
 Page 147, delete lines 16 through 42.  
 Delete page 148.  
 Page 149, delete lines 1 through 14.  
 Page 150, delete lines 23 through 42.  
 Delete pages 151 through 154.  
 Page 155, delete lines 1 through 16.  
 Page 165, delete lines 20 through 42.  
 Delete pages 166 through 170.  
 Page 171, delete lines 1 through 3.  
 Page 174, delete line 4.  
 Page 174, line 5, delete "(3)" and insert "**(2)**".  
 Page 174, line 9, delete "(4)" and insert "**(3)**".  
 Page 174, line 11, delete "(5)" and insert "**(4)**".  
 Page 174, delete lines 29 through 30.  
 Page 174, line 37, delete "city that has not consolidated its fire" and insert "**city**".  
 Page 174, delete line 38.  
 Page 180, delete lines 27 through 42.  
 Delete pages 181 through 182.  
 Page 183, delete lines 1 through 21.  
 Page 184, delete lines 4 through 42.  
 Delete pages 185 through 186.  
 Page 187, delete lines 1 through 12.  
 Page 187, delete lines 23 through 42.  
 Page 188, delete lines 1 through 10.  
 Page 188, line 13, delete "(a)".  
 Page 188, delete line 18.  
 Page 188, line 19, delete "(3)" and insert "**(2)**".  
 Page 188, line 20, delete "(4)" and insert "**(3)**".  
 Page 188, line 21, delete ", an airport authority,".  
 Page 188, delete lines 24 through 31.  
 Page 189, delete line 3.  
 Page 189, line 4, delete "(3)" and insert "**(2)**".  
 Page 191, delete lines 25 through 42.  
 Page 192, delete lines 1 through 9.  
 Page 192, delete lines 16 through 18.  
 Page 192, line 19, delete "3." and insert "**2**".  
 Page 192, delete lines 23 through 36.

Page 192, line 37, delete "6." and insert "**3**".  
 Page 193, line 4, delete "7." and insert "**4**".  
 Page 193, line 13, delete "8." and insert "**5**".  
 Page 193, line 28, delete ", which are governed by other" and insert ":",  
 Page 193, delete line 29.  
 Page 193, line 30, delete "Abolishment of the" and insert "**The**".  
 Page 193, line 30, delete "and the" and insert ".".  
 Page 193, delete lines 31 through 32.  
 Page 196, delete lines 35 through 42.  
 Page 197, delete lines 1 through 26.  
 Page 198, delete lines 3 through 42.  
 Delete pages 199 through 204.  
 Page 205, delete lines 1 through 21.  
 Page 205, line 32, delete "or IC 36-3-1-6.3".  
 Page 206, line 14, delete "or IC 36-3-1-6.3".  
 Page 209, delete lines 29 through 42.  
 Page 210, delete lines 1 through 10.  
 Page 212, delete lines 35 through 42.  
 Page 213, delete lines 1 through 35.  
 Renumber all SECTIONS consecutively.  
 (Reference is to SB 280 as introduced.)  
 and when so amended that said bill do pass.  
 Committee Vote: Yeas 5, Nays 3.

LAWSON, Chair

Report adopted.

#### COMMITTEE REPORT

Madam President: The Senate Committee on Homeland Security, Transportation and Veterans Affairs, to which was referred Senate Bill 250, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

Page 8, line 1, strike "following special institutions:"  
 Page 8, strike line 2.  
 Page 8, line 3, strike "(2)".  
 Page 8, run in lines 1 through 3.  
 Page 8, line 7, strike "each special institution designated in section" and insert "**the Indiana Soldiers' and Sailors' Children's Home**".  
 Page 8, strike line 8.  
 Page 8, line 9, after "The" insert "**eight (8)**".  
 Page 8, line 9, strike "following".  
 Page 8, line 9, strike "committees" and insert "**committee**".  
 Page 8, strike lines 11 through 19.  
 Page 8, between lines 24 and 25, begin a new line block indented and insert:  
**"(1) One (1) must be a licensed physician.**  
**(2) One (1) must be a state legislator from the district in which the home is located.**  
**(3) One (1) must be the director of veterans' affairs or the director's designee."**  
 Page 8, line 28, strike "an" and insert "**the**".  
 Page 8, line 29, strike "an" and insert "**the**".  
 Page 8, line 35, strike "each advisory committee's respective institutions." and insert "**the institution**".

Page 8, line 36, strike "an" and insert **"the"**.

Page 9, line 18, strike "superintendents of each advisory committee's respective institutions" and insert **"superintendent of the institution"**.

Page 9, line 20, after "for" insert **"the"**.

Page 9, line 21, strike "institutions" and insert **"institution"**.

Page 9, line 22, before "and" strike "institutions" and insert **"institution"**.

Page 9, line 22, after "special" strike "institutions." and insert **"institution."**.

Page 9, line 23, strike "Each" and insert **"The"**.

Page 9, line 27, strike "any" and insert **"a"**.

Page 9, line 27, strike "an" and insert **"the"**.

(Reference is to SB 250 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 11, Nays 0.

WYSS, Chair

Report adopted.

#### COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill 160, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

Page 1, delete lines 15 through 17, begin a new paragraph and insert:

**"SECTION 3. IC 34-11-2-11.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11.5. (a) The costs of a removal or remedial action involving hazardous substances or petroleum that may be recovered in an action under IC 13-30-9-2 are the following:**

**(1) The costs incurred within ten (10) years before the date the action is brought.**

**(2) The costs incurred on or after the date the action is brought.**

**(b) This section does not permit a person to revive an action brought under IC 13-30-9-2 that was finally adjudicated against the person."**

Page 2, delete lines 1 through 23.

Re-number all SECTIONS consecutively.

(Reference is to SB 160 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 7, Nays 0.

GARD, Chair

Report adopted.

#### COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill 200, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

Page 10, line 1, after "containing" insert **"more than ten (10) milligrams of"**.

Page 10, line 7, after "containing" insert **"more than ten (10) milligrams of"**.

Page 10, line 13, after "containing" insert **"more than ten (10) milligrams of"**.

Page 10, line 15, after "containing" insert **"more than ten (10) milligrams of"**.

Page 10, line 19, after "containing" insert **"more than ten (10) milligrams of"**.

Page 10, line 40, after "containing" insert **"more than ten (10) milligrams of"**.

Page 11, line 5, after "containing" insert **"more than ten (10) milligrams of"**.

Page 14, line 4, delete "an excessive" and insert **"a blood level of at least ten (10) micrograms of lead per deciliter of whole blood."**.

Page 14, delete lines 5 through 9.

Page 17, line 37, after "(a)" insert **"Rules adopted by the air pollution control board before January 1, 2009, under IC 13-17-14-5 (repealed) are considered rules of the state department after December 31, 2008."**.

Page 17, line 38, delete "before January 1, 2009,".

Page 17, line 38, after "to" insert **"replace the rules of the air pollution control board and to"**.

Page 17, line 39, after "rules" insert **"adopted by the state department"**.

Page 23, line 6, delete "5" and insert **"6"**.

(Reference is to SB 200 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 10, Nays 0.

GARD, Chair

Report adopted.

#### COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill 43, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

Page 3, line 4, strike "and" and insert **"stating"**.

Page 3, line 8, strike "readopt" and insert **"consider readoption of"**.

Page 3, line 15, after "submit the" insert **"readoption"**.

Page 3, line 18, after "(2)" insert **"for one (1) or more of the rules proposed to be readopted as part of the readoption rule described in subsection (a),"**.

Page 3, between lines 18 and 19, begin a new paragraph and insert:

**"(d) If a person submits to the department or a board that has rulemaking authority under this title a written request stating a basis for the request during the first comment period that a particular rule that the department or board does not intend to readopt as part of the readoption rule described in subsection (a) be readopted, the department or board must:**

**(1) consider readoption of that rule separately from the readoption rule described in subsection (a); and**

**(2) follow the procedure for adoption of administrative rules under IC 13-14-9 with respect to the rule."**

Page 3, line 36, after "product" insert ".".

Page 3, line 36, delete "by".

Page 3, delete line 37.

Page 4, line 24, delete "by incineration." and insert **"only if the balance in the waste tire management fund is insufficient, as determined by the commissioner, to remove and dispose of one-half (1/2) of the total number of waste tires located at tire sites in Indiana that are not certified under IC 13-20-13-3."**

(Reference is to SB 43 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 9, Nays 0.

GARD, Chair

Report adopted.

#### COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill 199, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

Page 1, delete lines 6 through 17, begin a new paragraph and insert:

**"SECTION 2. IC 13-30-10-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1.5. (a) Except as provided in subsection (b), a person regulated under IC 13-22 who knowingly does any of the following commits a Class B misdemeanor:**

- (1) Transports hazardous waste to an unpermitted facility.**
- (2) Treats, stores, or disposes of hazardous waste without a permit issued by the department.**
- (3) Transports, treats, stores, disposes, recycles, or causes to be transported used oil regulated under 329 IAC 13 in violation of the standards established by the department for the management of used oil.**
- (4) Makes a false material statement or representation in any label, manifest, record, report, or other document filed or maintained under the hazardous waste or used oil standards.**

**(b) An offense under subsection (a) is a Class D felony if the offense results in damage to the environment that renders the environment unfit for human or vertebrate animal life. An offense under subsection (a) is a Class C felony if the offense results in the death of another person.**

**(c) Before imposing sentence upon conviction of an offense under subsection (a) or (b), the court shall consider either or both of the following factors, if found by the jury or if stipulated to by the parties in a plea agreement:**

- (1) If the offense involves discharge of a contaminant into the environment, whether that discharge resulted in any or a combination of the following:**
  - (A) A substantial risk of serious bodily injury.**
  - (B) Serious bodily injury to an individual.**
  - (C) The death of a vertebrate animal.**

**(D) Damage to the environment that:**

- (i) renders the environment unfit for human or vertebrate animal life; or**
- (ii) causes damage to an endangered, an at risk, or a threatened species.**

**(2) Whether the person did not know and could not reasonably have been expected to know that the contaminant discharged into the environment was capable of causing a result described in subdivision (1).**

**(d) Notwithstanding IC 35-50-3-3, a person who is convicted of a Class B misdemeanor under subsection (a) may be punished by a fine of at least ten thousand dollars (\$10,000) per day for each violation and not more than twenty-five thousand dollars (\$25,000) per day for each violation.**

**(e) Notwithstanding IC 35-50-2-6(a) or IC 35-50-2-7(a), the court may order a person convicted under subsection (b) to pay:**

- (1) a fine of at least ten thousand dollars (\$10,000) and not more than fifty thousand dollars (\$50,000) for each day of violation; or**
- (2) if the person has a prior unrelated conviction for an offense under this title that may be punished as a felony, a fine of not more than one hundred thousand dollars (\$100,000) for each day of violation.**

**(f) Except as provided in subsection (g), a person regulated under IC 13-17 who does any of the following commits a Class C misdemeanor:**

- (1) Knowingly violates any applicable requirements of IC 13-17-4, IC 13-17-5, IC 13-17-6, IC 13-17-7, IC 13-17-8, IC 13-17-9, IC 13-17-10, IC 13-17-13, or IC 13-17-14.**
- (2) Knowingly violates any air pollution registration, construction, or operating permit condition issued by the department.**
- (3) Knowingly violates any fee or filing requirement in IC 13-17.**
- (4) Knowingly makes any false material statement, representation, or certification in any form, notice, or report required by an air pollution registration, construction, or operating permit issued by the department.**

**(g) An offense under subsection (f) is a Class D felony if the offense results in damage to the environment that renders the environment unfit for human or vertebrate animal life. An offense under subsection (f) is a Class C felony if the offense results in the death of another person.**

**(h) Before imposing sentence upon conviction of an offense under subsection (f) or (g), the court shall consider either or both of the following factors, if found by the jury or if stipulated to by the parties in a plea agreement:**

- (1) If the offense involves discharge of a contaminant into the environment, whether that discharge resulted in any or a combination of the following:**
  - (A) A substantial risk of serious bodily injury.**
  - (B) Serious bodily injury to an individual.**
  - (C) The death of a vertebrate animal.**
  - (D) Damage to the environment that:**

- (i) renders the environment unfit for human or vertebrate animal life; or
- (ii) causes damage to an endangered, an at risk, or a threatened species.

(2) Whether the person did not know and could not reasonably have been expected to know that the contaminant discharged into the environment was capable of causing a result described in subdivision (1).

(i) Notwithstanding IC 35-50-3-4, a person who is convicted of a Class C misdemeanor under subsection (f) may be punished by a fine of at least ten thousand dollars (\$10,000) per day for each violation and not more than twenty-five thousand dollars (\$25,000) per day for each violation.

(j) Notwithstanding IC 35-50-2-6(a) or IC 35-50-2-7(a), the court may order a person convicted under subsection (g) to pay:

- (1) a fine of at least ten thousand dollars (\$10,000) and not more than fifty thousand dollars (\$50,000) for each day of violation; or
- (2) if the person has a prior unrelated conviction for an offense under this title that may be punished as a felony, a fine of not more than one hundred thousand dollars (\$100,000) for each day of violation.

(k) Except as provided in subsection (l), a person regulated under IC 13-18 who does any of the following commits a Class C misdemeanor:

- (1) Willfully or recklessly violates any applicable standards or limitations of IC 13-18-3-2.4, IC 13-18-4-5, IC 13-18-8, IC 13-18-9, IC 13-18-10, IC 13-18-12, IC 13-18-14, IC 13-18-15, or IC 13-18-16.
- (2) Willfully or recklessly violates any National Pollutant Discharge Elimination System permit condition issue by the department under IC 13-18-19.
- (3) Willfully or recklessly violates any National Pollutant Discharge Elimination System Permit filing requirement.
- (4) Knowingly makes any false material statement, representation, or certification in any National Pollutant Discharge Elimination System Permit form or in any notice or report required by a National Pollutant Discharge Elimination System permit issued by the Department.

(l) An offense under subsection (k) is a Class D felony if the offense results in damage to the environment that renders the environment unfit for human or vertebrate animal life. An offense under subsection (k) is a Class C felony if the offense results in the death of another person.

(m) Before imposing sentence upon conviction of an offense under subsection (k) or (l), the court shall consider either or both of the following factors, if found by the jury or if stipulated to by the parties in a plea agreement:

- (1) If the offense involves discharge of a contaminant into the environment, whether that discharge resulted in any or a combination of the following:
  - (A) A substantial risk of serious bodily injury.
  - (B) Serious bodily injury to an individual.

(C) The death of a vertebrate animal.

(D) Damage to the environment that:

- (i) renders the environment unfit for human or vertebrate animal life; or
- (ii) causes damage to an endangered, an at risk, or a threatened species.

(2) Whether the person did not know and could not reasonably have been expected to know that the contaminant discharged into the environment was capable of causing a result described in subdivision (1).

(3) Whether the discharge was the result of a combined sewer overflow and the person regulated had given notice of that fact to the department.

(n) Notwithstanding IC 35-50-3-4, a person who is convicted of a Class C misdemeanor under subsection (k)(1), (k)(2), or (k)(3) may be punished by a fine of at least ten thousand dollars (\$10,000) a day for each violation and not more than twenty-five thousand dollars (\$25,000) a day for each violation.

(o) Notwithstanding IC 35-50-3-4, a person who is convicted of a Class C misdemeanor under subsection (k)(4) may be punished by a fine of at least five thousand dollars (\$5,000) for each instance of violation and not more than ten thousand dollars (\$10,000) for each instance of violation.

(p) Notwithstanding IC 35-50-2-6(a) or IC 35-50-2-7(a), the court may order a person convicted under subsection (l) to pay:

- (1) a fine of at least ten thousand dollars (\$10,000) and not more than fifty thousand dollars (\$50,000) for each day of violation; or
- (2) if the person has a prior unrelated conviction for an offense under this title that may be punished as a felony, a fine of not more than one hundred thousand dollars (\$100,000) for each day of violation."

Delete page 2.

Page 3, delete lines 1 through 4.

Page 6, after line 40, begin a new paragraph and insert:

"SECTION 5. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "task force" refers to the environmental crimes task force established by this SECTION.

(b) There is established the environmental crimes task force.

(c) The task force consists of the members of the environmental crimes task force created by P.L.1- 2006, SECTION 590 who served on December 31, 2007.

(d) The appointed members of the task force serve at the pleasure of the appointing authority under P.L.1-2006, SECTION 590. The appointing authority under P.L.1-2006, SECTION 590 shall fill any vacancy on the task force within forty-five (45) days.

(e) The chairman of the legislative council shall designate a legislative member of the task force to serve as chairperson of the task force.

(f) The expenses of the task force shall be paid from appropriations made to the legislative council or the legislative services agency.

(g) The task force shall do the following:

(1) Conduct at least one (1) public hearing to receive comments from the public on the need for further amendments to IC 13-30-10.

(2) If the task force determines that further amendments to IC 13-30-10 are appropriate, prepare recommendations for amendments to IC 13-30-10 that are consistent with the minimum requirements for the department of environmental management delegated state programs.

(3) Submit its final report before November 1, 2008, to:

(A) the governor;

(B) the executive director of the legislative services agency in an electronic format under IC 5-14-6; and

(C) the environmental quality service council.

(h) The legislative services agency shall provide staff support to the task force.

(i) The task force shall operate under the policies governing study committees adopted by the legislative council.

(j) A quorum of the task force must be present to conduct business. A quorum consists of a majority of the members of the task force. The task force may not take an official action unless the official action has been approved by at least a majority of the members of the task force.

(k) This SECTION expires January 1, 2009.

SECTION 6. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

(Reference is to SB 199 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 5, Nays 1.

GARD, Chair

Report adopted.

#### COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill 10, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

Page 2, line 14, after "(IC 35-42-5-20)" insert "**if the commissioner determines that the interest in disclosure overrides the interest to be served by nondisclosure**".

Page 4, line 29, after "obtains" insert "**or attempts to obtain**".

(Reference is to SB 10 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 6, Nays 0.

STEELE, Chair

Report adopted.

#### COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill 83, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

Page 1, line 4, after "to" insert ":

(1)".

Page 1, line 6, delete "." and insert "**committed by a person holding a commercial driver's license; or**

**(2) a felony or misdemeanor relating to the operation of a motor vehicle committed by a person who does not hold a commercial driver's license.**".

(Reference is to SB 83 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 6, Nays 0.

STEELE, Chair

Report adopted.

#### COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill 130, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

Page 2, line 6, delete "provided" and insert "**given**".

Page 2, line 6, after "person" insert "**in writing to the lessor at the time the lease agreement was signed.**".

Page 2, delete line 7.

(Reference is to SB 130 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 6, Nays 0.

STEELE, Chair

Report adopted.

#### COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill 233, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

Page 2, line 27, after "16." insert "**(a) As used in this section, "end user" does not include a person who receives by contract a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to another person or persons.**

**(b)".**

(Reference is to SB 233 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 10, Nays 0.

KENLEY, Chair

Report adopted.

#### COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill 208, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

Replace the effective dates in SECTIONS 1 through 5 with "[EFFECTIVE JULY 1, 2008]".

Page 1, line 6, delete "section by automatic deduction from a" and insert "**section**:"

- (1) by automatic deduction from a checking account; or  
(2) under a monthly installment plan."

Page 1, delete line 7, begin a new paragraph and insert:

**"(b) As used in this section, "monthly installment plan" means a plan that:**

- (1) is adopted under this section;  
(2) provides for the monthly payment of tax liability; and  
(3) does not involve an automatic deduction from a checking account."

Page 1, line 8, delete "(b)" and insert "(c)".

Page 1, line 10, delete "(c)" and insert "(d)".

Page 1, line 13, delete "(d)" and insert "(e)".

Page 1, line 15, delete "automatic monthly" and insert "any combination of the following:

- (1) Automatic monthly deductions from a checking account.

- (2) Payments under a monthly installment plan."

Page 1, delete line 16.

Page 1, line 17, delete "(e)" and insert "(f)".

Page 1, line 17, delete "(d):" and insert "(e):".

Page 2, line 1, after "year;" insert "and".

Page 2, delete lines 2 through 6.

Page 2, line 7, delete "(3)" and insert "(2)".

Page 2, line 9, delete "payment by automatic deduction" and insert "payment:

- (i) by automatic deduction from a checking account; or

- (ii) under a monthly installment plan; is authorized."

Page 2, delete line 10.

Page 2, line 12, delete "installments by" and insert "installments:

- (i) by automatic deduction from a checking account; or

- (ii) under a monthly installment plan."

Page 2, delete line 13.

Page 2, between lines 23 and 24, begin a new line double block indented and insert:

**"(D) Authority for the county treasurer to accept payment of the taxpayer's property taxes under a monthly installment plan."**

Page 2, line 24, delete "(f)" and insert "(g)".

Page 2, line 24, delete "(d)" and insert "(e)".

Page 2, line 26, delete "(e)(3)(C)" and insert "(f)(2)(C)".

Page 2, line 30, after "month" insert ", as chosen by the taxpayer,".

Page 2, line 34, delete "(m)" and insert "(n)".

Page 2, line 42, delete "(g)" and insert "(h)".

Page 3, line 1, delete "(f)(3)" and insert "(g)(3)".

Page 3, line 3, delete "(h) and (i)" and insert "(i) and (j)".

Page 3, line 21, after "account" insert "or the amount due under a monthly installment plan".

Page 3, line 28, delete "(e)(3)(A);" and insert "(f)(2)(A);".

Page 3, line 35, after "deductions" delete "." and insert "or, in the case of payments under a monthly installment plan, the number of monthly installments."

Page 3, line 36, delete "(h)" and insert "(i)".

Page 3, line 36, after "deduction" insert "or the amount of the monthly installment due under a monthly installment plan".

Page 3, line 38, delete "(g)" and insert "(h)".

Page 3, line 40, delete "(g)" and insert "(h)".

Page 3, line 41, after "year." insert "Notwithstanding this subsection or subsections (h), (j), and (k), a county fiscal body that adopts an ordinance under subsection (e) to allow taxpayers to pay property taxes by automatic monthly deductions from a checking account may include in the ordinance a provision authorizing a taxpayer to determine the amount of a monthly deduction that is different from the amount otherwise determined under this subsection or subsection (h), (j), or (k)."

Page 3, line 42, delete "(i)" and insert "(j)".

Page 4, line 1, delete "(d)" and insert "(e)".

Page 4, line 4, after "account" delete "," and insert "or the amount of the taxpayer's monthly installment payment under a monthly installment plan,".

Page 4, line 6, delete "(g)" and insert "(h)".

Page 4, line 8, delete "(j)" and insert "(k)".

Page 4, line 9, delete "(f)(3)" and insert "(g)(3)".

Page 4, line 12, after "account" insert "or the amount of the taxpayer's monthly installment payment under a monthly installment plan".

Page 4, line 14, delete "(e)(3)(A)" and insert "(f)(2)(A)".

Page 4, line 16, delete "(k)" and insert "(l)".

Page 4, line 20, delete "(l)" and insert "(m)".

Page 4, line 23, delete "(m)" and insert "(n)".

Page 4, line 23, after "deduction" insert "or last monthly installment payment under a monthly installment plan".

Page 4, line 35, delete "deductions and" and insert "deductions, monthly installment payments under a monthly installment plan, and".

Page 4, line 35, delete "deductions." and insert "deductions or monthly installment payments."

Page 5, line 1, after "that" delete ":" and insert "the county treasurer will apply the excess as a credit against the taxpayer's tax liability for the immediately succeeding calendar year unless the taxpayer makes a claim for refund of the excess under IC 6-1.1-26."

Page 5, delete lines 2 through 16, begin a new paragraph and insert:

**"(o) The county auditor shall distribute tax collections under this section to the appropriate taxing units at the semiannual settlements under IC 6-1.1-27. However, this subsection does not prohibit a county treasurer from making an advance to a political subdivision under IC 5-13-6-3 of a portion of the taxes collected."**

Page 5, line 19, delete "(f);" and insert "(g);".

Page 5, line 21, delete "(m)." and insert "(n).".

Page 5, line 23, delete "(m)" and insert "(n)".

Page 5, line 26, after "deduction" insert "or by monthly installments under a monthly installment plan".

Page 5, line 30, delete "(m)" and insert "(n)".

Page 8, line 35, after "deduction" insert "or by monthly installments under a monthly installment plan".

Page 8, line 39, delete "IC 6-1.1-22-9.7(d)" and insert **"IC 6-1.1-22-9.7(e)"**.

Page 8, line 40, after "deduction" insert **"or monthly installment"**.

Page 9, line 2, after "deductions" insert **"or by monthly installments under a monthly installment plan"**.

Page 9, line 5, delete "deductions or" and insert **"deductions, by monthly installments, or"**.

Page 9, line 5, after "automatic deductions" insert **"or monthly installment payments"**.

Page 10, line 1, after "deduction" insert **"or by monthly installments under a monthly installment plan"**.

Page 10, line 5, delete "IC 6-1.1-22-9.7(d)" and insert **"IC 6-1.1-22-9.7(e)"**.

Page 10, line 6, after "deduction" insert **"or monthly installment payment"**.

Page 10, line 11, after "deductions" insert **"or by monthly installments under a monthly installment plan"**.

Page 10, line 13, after "deductions" insert **", by monthly installments,"**.

Page 10, line 14, after "deductions" insert **"or monthly installment payments"**.

(Reference is to SB 208 as introduced.)  
and when so amended that said bill do pass.  
Committee Vote: Yeas 10, Nays 0.

KENLEY, Chair

Report adopted.

#### COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill 19, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

**"SECTION 1. IC 6-2.5-4-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 16. (a) This section applies to transactions occurring after June 30, 2008.**

**(b) A person is a retail merchant making a retail transaction when the person:**

- (1) leases an aircraft to another person; and**
- (2) provides flight instruction services to the lessee during the term of the lease.**

**(c) The amount of the gross retail income attributable to a retail transaction described in subsection (b) is the amount charged by the lessor for the lease of the aircraft used in conjunction with the flight instruction services provided to the lessee.**

**SECTION 2. IC 6-2.5-6-1, AS AMENDED BY P.L.211-2007, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 1. (a) Except as otherwise provided in this section, each person liable for collecting the state gross retail or use tax shall file a return for each calendar month and pay the state gross retail and use taxes that the person collects during that month. A person shall file the**

**person's return for a particular month with the department and make the person's tax payment for that month to the department not more than thirty (30) days after the end of that month, if that person's average monthly liability for collections of state gross retail and use taxes under this section as determined by the department for the preceding calendar year did not exceed one thousand dollars (\$1,000). If a person's average monthly liability for collections of state gross retail and use taxes under this section as determined by the department for the preceding calendar year exceeded one thousand dollars (\$1,000), that person shall file the person's return for a particular month and make the person's tax payment for that month to the department not more than twenty (20) days after the end of that month.**

**(b) If a person files a combined sales and withholding tax report and either this section or IC 6-3-4-8.1 requires sales or withholding tax reports to be filed and remittances to be made within twenty (20) days after the end of each month, then the person shall file the combined report and remit the sales and withholding taxes due within twenty (20) days after the end of each month.**

**(c) Instead of the twelve (12) monthly reporting periods required by subsection (a), the department may permit a person to divide a year into a different number of reporting periods. The return and payment for each reporting period is due not more than twenty (20) days after the end of the period.**

**(d) Instead of the reporting periods required under subsection (a), the department may permit a retail merchant to report and pay the merchant's state gross retail and use taxes for a period covering**

**(1) a calendar year, if the retail merchant's average monthly state gross retail and use tax liability in the previous calendar year does not exceed ten dollars (\$10);**

**(2) a calendar half year, if the retail merchant's average monthly state gross retail and use tax liability in the previous calendar year does not exceed twenty-five dollars (\$25); or**

**(3) a calendar quarter, if the retail merchant's average monthly state gross retail and use tax liability in the previous calendar year does not exceed seventy-five dollars (\$75);**

**one thousand dollars (\$1,000). A retail merchant using a reporting period allowed under this subsection must file the merchant's return and pay the merchant's tax for a reporting period not later than the last day of the month immediately following the close of that reporting period.**

**(e) If a retail merchant reports the merchant's adjusted gross income tax, or the tax the merchant pays in place of the adjusted gross income tax, over a fiscal year or fiscal quarter not corresponding to the calendar year, or calendar quarter, the merchant may, without prior departmental approval, report and pay the merchant's state gross retail and use taxes over the merchant's fiscal period year that corresponds to the calendar period year the merchant is permitted to use under subsection (d). However, the department may, at any time, require the retail merchant to stop using the fiscal reporting period.**

**(f) If a retail merchant files a combined sales and withholding tax report, the reporting period for the combined report is the shortest period required under:**



- (1) this section;
- (2) IC 6-3-4-8; or
- (3) IC 6-3-4-8.1.

(g) If the department determines that a person's:

- (1) estimated monthly gross retail and use tax liability for the current year; or
- (2) average monthly gross retail and use tax liability for the preceding year;

exceeds five thousand dollars (\$5,000), the person shall pay the monthly gross retail and use taxes due by electronic funds transfer (as defined in IC 4-8.1-2-7) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

~~(h) If a person's gross retail and use tax payment is made by electronic funds transfer, the taxpayer is not required to file a monthly gross retail and use tax return. However, the person shall file a quarterly gross retail and use tax return before the twentieth day after the end of each calendar quarter:~~

~~(i) (h) A person:~~

- ~~(1) who has voluntarily registered as a seller under the Streamlined Sales and Use Tax Agreement;~~
- ~~(2) who is not a Model 1, Model 2, or Model 3 seller (as defined in the Streamlined Sales and Use Tax Agreement); and~~
- ~~(3) whose liability for collections of state gross retail and use taxes under this section for the preceding calendar year as determined by the department does not exceed one thousand dollars (\$1,000);~~

is not required to file a monthly gross retail and use tax return.

SECTION 3. IC 6-2.5-6-9, AS AMENDED BY P.L.162-2006, SECTION 23, AND AS AMENDED BY P.L.184-2006, SECTION 2, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. (a) In determining the amount of state gross retail and use taxes which a retail merchant must remit under section 7 of this chapter, the retail merchant shall, subject to subsections (c) and (d), deduct from the retail merchant's gross retail income from retail transactions made during a particular reporting period, an amount equal to the retail merchant's receivables which:

- (1) resulted from retail transactions in which the retail merchant did not collect the state gross retail or use tax from the purchaser;
- (2) resulted from retail transactions on which the retail merchant has previously paid the state gross retail or use tax liability to the department; and
- (3) were written off as an uncollectible debt for federal tax purposes under Section 166 of the Internal Revenue Code during the particular reporting period.

(b) If a retail merchant deducts a receivable under subsection (a) and subsequently collects all or part of that receivable, then the retail merchant shall, subject to subsection ~~(d)(6); (d)(7)~~, include the amount collected as part of the retail merchant's gross retail income from retail transactions for the particular reporting period in which the retail merchant makes the collection.

(c) This subsection applies only to retail transactions occurring after ~~June 30, 2007; December 31, 2006~~. As used in this subsection, "affiliated group" means any combination of the

following:

- (1) An affiliated group within the meaning provided in Section 1504 of the Internal Revenue Code, except that the ownership percentage in Section 1504(a)(2) of the Internal Revenue Code shall be determined using fifty percent (50%) instead of eighty percent (80%).
- (2) Two (2) or more partnerships (as defined in IC 6-3-1-19), including limited liability companies and limited liability partnerships, that have the same degree of mutual ownership as an affiliated group described in subdivision (1), as determined under the rules adopted by the department.

The right to a deduction under this section is not assignable to an individual or entity that is not part of the same affiliated group as the assignor.

(d) The following provisions apply to a deduction for a receivable treated as uncollectible debt under subsection (a):

**(1) A purchaser of accounts receivable that become uncollectible during a taxable year is entitled to a deduction based on the price paid for the receivables but not on their face value.**

~~(1) (2)~~ The deduction does not include interest.

~~(2) (3)~~ The amount of the deduction shall be determined in the manner provided by Section 166 of the Internal Revenue Code for bad debts but shall be adjusted to exclude:

- (A) financing charges or interest;
- (B) sales or use taxes charged on the purchase price;
- (C) uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid;
- (D) expenses incurred in attempting to collect any debt; and
- (E) repossessed property.

~~(3) (4)~~ The deduction shall be claimed on the return for the period during which the receivable is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this subdivision, a claimant who is not required to file federal income tax returns may deduct an uncollectible receivable on a return filed for the period in which the receivable is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant were required to file a federal income tax return.

~~(4) (5)~~ If the amount of uncollectible receivables claimed as a deduction by a retail merchant for a particular reporting period exceeds the amount of the retail merchant's taxable sales for that reporting period, the retail merchant may file a refund claim under IC 6-8.1-9. However, the deadline for the refund claim shall be measured from the due date of the return for the reporting period on which the deduction for the uncollectible receivables could first be claimed.

~~(5) (6)~~ If a retail merchant's filing responsibilities have been assumed by a certified service provider (as defined in IC 6-2.5-11-2), the certified service provider may claim, on behalf of the retail merchant, any deduction or refund for

uncollectible receivables provided by this section. The certified service provider must credit or refund the full amount of any deduction or refund received to the retail merchant.

~~(6)~~ (7) For purposes of reporting a payment received on a previously claimed uncollectible receivable, any payments made on a debt or account shall be applied first proportionally to the taxable price of the property and the state gross retail tax or use tax thereon, and secondly to interest, service charges, and any other charges.

~~(7)~~ (8) A retail merchant claiming a deduction for an uncollectible receivable may allocate that receivable among the states that are members of the streamlined sales and use tax agreement if the books and records of the retail merchant support that allocation.

SECTION 4, IC 6-3-3-12, AS AMENDED BY P.L.211-2007, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]: Sec. 12. (a) As used in this section, "account" has the meaning set forth in IC 21-9-2-2.

(b) As used in this section, "account beneficiary" has the meaning set forth in IC 21-9-2-3.

(c) As used in this section, "account owner" has the meaning set forth in IC 21-9-2-4.

(d) As used in this section, "college choice 529 education savings plan" refers to a college choice 529 investment plan established under IC 21-9.

(e) As used in this section, "nonqualified withdrawal" means a withdrawal or distribution from a college choice 529 education savings plan that is not a qualified withdrawal.

(f) As used in this section, "qualified higher education expenses" has the meaning set forth in IC 21-9-2-19.5.

(g) As used in this section, "qualified withdrawal" means a withdrawal or distribution from a college choice 529 education savings plan that is made:

- (1) to pay for qualified higher education expenses, excluding any withdrawals or distributions used to pay for qualified higher education expenses if the withdrawals or distributions are made from an account of a college choice 529 education savings plan that is terminated within twelve (12) months after the account is opened;
- (2) as a result of the death or disability of an account beneficiary;
- (3) because an account beneficiary received a scholarship that paid for all or part of the qualified higher education expenses of the account beneficiary, to the extent that the withdrawal or distribution does not exceed the amount of the scholarship; or
- (4) by a college choice 529 education savings plan as the result of a transfer of funds by a college choice 529 education savings plan from one (1) third party custodian to another.

A qualified withdrawal does not include a rollover distribution or transfer of assets from a college choice 529 education savings plan to any other qualified tuition program under Section 529 of the Internal Revenue Code that is not a college choice 529 education savings plan.

(h) As used in this section, "taxpayer" means:

- (1) an individual filing a single return; or
- (2) a married couple filing a joint return.

(i) A taxpayer is entitled to a credit against the taxpayer's adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for a taxable year equal to the least of the following:

- (1) Twenty percent (20%) of the amount of the total contributions made by the taxpayer to an account or accounts of a college choice 529 education savings plan during the taxable year.
- (2) One thousand dollars (\$1,000).
- (3) The amount of the taxpayer's adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for the taxable year, reduced by the sum of all credits (as determined without regard to this section) allowed by IC 6-3-1 through IC 6-3-7.

(j) A taxpayer is not entitled to a carryback, carryover, or refund of an unused credit.

(k) A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this section.

(l) To receive the credit provided by this section, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department all information that the department determines is necessary for the calculation of the credit provided by this section.

(m) An account owner of an account of a college choice 529 education savings plan must repay all or a part of the credit in a taxable year in which any nonqualified withdrawal is made from the account. The amount the taxpayer must repay is equal to the lesser of:

- (1) twenty percent (20%) of the total amount of nonqualified withdrawals made during the taxable year from the account; or
- (2) the excess of:
  - (A) the cumulative amount of all credits provided by this section that are claimed by any taxpayer with respect to the taxpayer's contributions to the account for all prior taxable years beginning on or after January 1, 2007; over
  - (B) the cumulative amount of repayments paid by the account owner under this subsection for all prior taxable years beginning on or after January 1, 2008.

(n) Any required repayment under subsection (m) shall be reported by the account owner on the account owner's annual state income tax return for any taxable year in which a nonqualified withdrawal is made.

**(o) A nonresident account owner who is not required to file an annual income tax return for a taxable year in which a nonqualified withdrawal is made shall make any required repayment on the form required under IC 6-3-4-1(2). If the nonresident account owner does not make the required repayment, the department shall issue a demand notice in accordance with IC 6-8.1-5-1.**

~~(7)~~ (p) The executive director of the Indiana education savings authority shall submit or cause to be submitted to the department a copy of all information returns or statements issued to account owners, account beneficiaries, and other taxpayers for each

taxable year with respect to:

- (1) nonqualified withdrawals made from accounts of a college choice 529 education savings plan for the taxable year; or
- (2) account closings for the taxable year.

SECTION 5. IC 6-3-4-1.5, AS ADDED BY P.L.211-2007, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 1.5. **(a) Except as provided by subsection (b),** if a professional preparer files more than one hundred (100) returns in a calendar year for persons described in section 1(1) or 1(2) of this chapter, in the immediately following calendar year the professional preparer shall file returns for persons described in section 1(1) or 1(2) of this chapter in an electronic format specified by the department.

**(b) A professional preparer described in subsection (a) is not required to file a return in an electronic format if:**

- (1) the taxpayer or taxpayer's spouse claims the additional exemption for the elderly under IC 6-3-1-3.5(a)(4)(B); and**
- (2) the taxpayer requests in writing that the return not be filed in an electronic format.**

**Returns filed by a professional preparer under this subsection shall not be used in determining the professional preparer's requirement to file returns in an electronic format.**

**(c) A professional preparer who does not comply with subsection (a) is subject to a penalty of fifty dollars (\$50) for each return not filed in an electronic format, with a maximum penalty of twenty-five thousand dollars (\$25,000) per calendar year."**

Page 8, delete lines 15 through 27, begin a new paragraph and insert:

"SECTION 9. IC 6-3-4-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 16. **(a) For individual income tax returns filed after December 31, 2010, the department shall develop procedures to implement a system of crosschecks between:**

- (1) employer WH-3 forms (annual withholding tax reports) with accompanying W-2s; and**
- (2) individual taxpayer W-2 forms.**

**(b) The department and the office of management and budget shall develop reports and procedures to ensure that income taxes imposed under IC 6-3.5 are accurately and properly distributed to each county."**

Page 8, between lines 27 and 28, begin a new paragraph and insert:

"SECTION 10. IC 6-3.1-21-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 6. **(a) Except as provided by subsection (b),** an individual who is eligible for an earned income tax credit under Section 32 of the Internal Revenue Code is eligible for a credit under this chapter equal to six percent (6%) of the amount of the federal earned income tax credit that the individual:

- (1) is eligible to receive in the taxable year; and
- (2) claimed for the taxable year;

under Section 32 of the Internal Revenue Code.

**(b) In the case of a nonresident taxpayer or a resident taxpayer residing in Indiana for a period of less than the taxpayer's entire taxable year, the amount of the credit is equal to the product of:**

- (1) the amount determined under subsection (a); multiplied by**
- (2) the quotient of the taxpayer's income taxable in Indiana divided by the taxpayer's total income.**

~~(b)~~ **(c)** If the credit amount exceeds the taxpayer's adjusted gross income tax liability for the taxable year, the excess, less any advance payments of the credit made by the taxpayer's employer under IC 6-3-4-8 that reduce the excess, shall be refunded to the taxpayer."

Page 10, between lines 33 and 34, begin a new paragraph and insert:

"SECTION 15. IC 6-5.5-1-2, AS AMENDED BY P.L.223-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 2. **(a)** Except as provided in subsections (b) through (d), "adjusted gross income" means taxable income as defined in Section 63 of the Internal Revenue Code, adjusted as follows:

**(1) Add the following amounts:**

**(A)** An amount equal to a deduction allowed or allowable under Section 166, Section 585, or Section 593 of the Internal Revenue Code.

**(B)** An amount equal to a deduction allowed or allowable under Section 170 of the Internal Revenue Code.

**(C)** An amount equal to a deduction or deductions allowed or allowable under Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by a state of the United States or levied at the local level by any subdivision of a state of the United States.

**(D)** The amount of interest excluded under Section 103 of the Internal Revenue Code or under any other federal law, minus the associated expenses disallowed in the computation of taxable income under Section 265 of the Internal Revenue Code.

**(E)** An amount equal to the deduction allowed under Section 172 or 1212 of the Internal Revenue Code for net operating losses or net capital losses.

**(F)** For a taxpayer that is not a large bank (as defined in Section 585(c)(2) of the Internal Revenue Code), an amount equal to the recovery of a debt, or part of a debt, that becomes worthless to the extent a deduction was allowed from gross income in a prior taxable year under Section 166(a) of the Internal Revenue Code.

**(G)** Add the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(H) Add the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding twenty-five thousand dollars (\$25,000).

(I) Add an amount equal to the amount that a taxpayer claimed as a deduction for domestic production activities for the taxable year under Section 199 of the Internal Revenue Code for federal income tax purposes.

**(J) Add an amount equal to a deduction for dividends paid (as defined in Section 561 of the Internal Revenue Code) to shareholders of a captive real estate investment trust (as defined in section 21 of this chapter).**

(2) Subtract the following amounts:

(A) Income that the United States Constitution or any statute of the United States prohibits from being used to measure the tax imposed by this chapter.

(B) Income that is derived from sources outside the United States, as defined by the Internal Revenue Code.

(C) An amount equal to a debt or part of a debt that becomes worthless, as permitted under Section 166(a) of the Internal Revenue Code.

(D) An amount equal to any bad debt reserves that are included in federal income because of accounting method changes required by Section 585(c)(3)(A) or Section 593 of the Internal Revenue Code.

(E) The amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation.

(F) The amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding twenty-five thousand dollars (\$25,000).

(G) Income that is:

- (i) exempt from taxation under IC 6-3-2-21.7; and
- (ii) included in the taxpayer's taxable income under the Internal Revenue Code.

(b) In the case of a credit union, "adjusted gross income" for a taxable year means the total transfers to undivided earnings minus dividends for that taxable year after statutory reserves are

set aside under IC 28-7-1-24.

(c) In the case of an investment company, "adjusted gross income" means the company's federal taxable income multiplied by the quotient of:

(1) the aggregate of the gross payments collected by the company during the taxable year from old and new business upon investment contracts issued by the company and held by residents of Indiana; divided by

(2) the total amount of gross payments collected during the taxable year by the company from the business upon investment contracts issued by the company and held by persons residing within Indiana and elsewhere.

(d) As used in subsection (c), "investment company" means a person, copartnership, association, limited liability company, or corporation, whether domestic or foreign, that:

(1) is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.); and

(2) solicits or receives a payment to be made to itself and issues in exchange for the payment:

(A) a so-called bond;

(B) a share;

(C) a coupon;

(D) a certificate of membership;

(E) an agreement;

(F) a pretended agreement; or

(G) other evidences of obligation;

entitling the holder to anything of value at some future date, if the gross payments received by the company during the taxable year on outstanding investment contracts, plus interest and dividends earned on those contracts (by prorating the interest and dividends earned on investment contracts by the same proportion that certificate reserves (as defined by the Investment Company Act of 1940) is to the company's total assets) is at least fifty percent (50%) of the company's gross payments upon investment contracts plus gross income from all other sources except dividends from subsidiaries for the taxable year. The term "investment contract" means an instrument listed in clauses (A) through (G).

SECTION 16. IC 6-5.5-1-21 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 21. (a) Except as provided in subsection (b), "captive real estate investment trust" means a corporation, a trust, or an association:**

**(1) that is considered a real estate investment trust for the taxable year under Section 856 of the Internal Revenue Code;**

**(2) that is not regularly traded on an established securities market; and**

**(3) in which more than fifty percent (50%) of the:**

**(A) voting power;**

**(B) beneficial interests; or**

**(C) shares;**

**are owned or controlled, directly or constructively, by a single entity that is subject to Subchapter C of Chapter 1 of the Internal Revenue Code.**

**(b) The term does not include a corporation, a trust, or an association in which more than fifty percent (50%) of the**

entity's voting power, beneficial interests, or shares are owned by a single entity described in subsection (a)(3) that is owned or controlled, directly or constructively, by:

- (1) a corporation, a trust, or an association that is considered a real estate investment trust under Section 856 of the Internal Revenue Code;
- (2) a person exempt from taxation under Section 501 of the Internal Revenue Code; or
- (3) a real estate investment trust that:
  - (A) is intended to become regularly traded on an established securities market; and
  - (B) satisfies the requirements of Section 856(a)(5) and 856(a)(6) of the Internal Revenue Code under Section 856(h) of the Internal Revenue Code.

(c) For purposes of this section, the constructive ownership rules of Section 318 of the Internal Revenue Code, as modified by Section 856(d)(5) of the Internal Revenue Code, apply to the determination of the ownership of stock, assets, or net profits of any person.

SECTION 17. IC 6-7-1-17, AS AMENDED BY P.L.218-2007, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 17. (a) Distributors who hold certificates and retailers shall be agents of the state in the collection of the taxes imposed by this chapter and the amount of the tax levied, assessed, and imposed by this chapter on cigarettes sold, exchanged, bartered, furnished, given away, or otherwise disposed of by distributors or to retailers. Distributors who hold certificates shall be agents of the department to affix the required stamps and shall be entitled to purchase the stamps from the department at a discount of one and two-tenths cents (\$0.012) per individual package of cigarettes as compensation for their labor and expense.

(b) The department may permit distributors who hold certificates and who are admitted to do business in Indiana to pay for revenue stamps within thirty (30) days after the date of purchase. However, the privilege is extended upon the express condition that:

- (1) except as provided in subsection (c), a bond or letter of credit satisfactory to the department, in an amount not less than the sales price of the stamps, is filed with the department; ~~and~~
- (2) proof of payment is made of all ~~local~~ property taxes, state income, and excise taxes, and listed taxes (as defined in IC 6-8.1-1-1) for which any such distributor may be liable; and
- (3) payment for the revenue stamps must be made by electronic funds transfer (as defined in IC 4-8.1-2-7).

The bond or letter of credit, conditioned to secure payment for the stamps, shall be executed by the distributor as principal and by a corporation duly authorized to engage in business as a surety company or financial institution in Indiana.

(c) If a distributor has at least five (5) consecutive years of good credit standing with the state, the distributor shall not be required to post a bond or letter of credit under subsection (b).

SECTION 18. IC 6-8.1-7-1, AS AMENDED BY P.L.219-2007, SECTION 92, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) This subsection does not apply to the disclosure of information

concerning a conviction on a tax evasion charge. Unless in accordance with a judicial order or as otherwise provided in this chapter, the department, its employees, former employees, counsel, agents, or any other person may not divulge the amount of tax paid by any taxpayer, terms of a settlement agreement executed between a taxpayer and the department, investigation records, investigation reports, or any other information disclosed by the reports filed under the provisions of the law relating to any of the listed taxes, including required information derived from a federal return, except to:

- (1) members and employees of the department;
- (2) the governor;
- (3) the attorney general or any other legal representative of the state in any action in respect to the amount of tax due under the provisions of the law relating to any of the listed taxes; or
- (4) any authorized officers of the United States;

when it is agreed that the information is to be confidential and to be used solely for official purposes.

(b) The information described in subsection (a) may be revealed upon the receipt of a certified request of any designated officer of the state tax department of any other state, district, territory, or possession of the United States when:

- (1) the state, district, territory, or possession permits the exchange of like information with the taxing officials of the state; and
- (2) it is agreed that the information is to be confidential and to be used solely for tax collection purposes.

(c) The information described in subsection (a) relating to a person on public welfare or a person who has made application for public welfare may be revealed to the director of the division of family resources, and to any director of a county office of family and children located in Indiana, upon receipt of a written request from either director for the information. The information shall be treated as confidential by the directors. In addition, the information described in subsection (a) relating to a person who has been designated as an absent parent by the state Title IV-D agency shall be made available to the state Title IV-D agency upon request. The information shall be subject to the information safeguarding provisions of the state and federal Title IV-D programs.

(d) The name, address, Social Security number, and place of employment relating to any individual who is delinquent in paying educational loans owed to a postsecondary educational institution may be revealed to that institution if it provides proof to the department that the individual is delinquent in paying for educational loans. This information shall be provided free of charge to approved postsecondary educational institutions (as defined by IC 21-7-13-6(a)). The department shall establish fees that all other institutions must pay to the department to obtain information under this subsection. However, these fees may not exceed the department's administrative costs in providing the information to the institution.

(e) The information described in subsection (a) relating to reports submitted under IC 6-6-1.1-502 concerning the number of gallons of gasoline sold by a distributor and IC 6-6-2.5 concerning the number of gallons of special fuel sold by a supplier and the number of gallons of special fuel exported by a

licensed exporter or imported by a licensed transporter may be released by the commissioner upon receipt of a written request for the information.

(f) The information described in subsection (a) may be revealed upon the receipt of a written request from the administrative head of a state agency of Indiana when:

- (1) the state agency shows an official need for the information; and
- (2) the administrative head of the state agency agrees that any information released will be kept confidential and will be used solely for official purposes.

**(g) The information described in subsection (a) may be revealed upon the receipt of a written request from the chief law enforcement officer of a state or local law enforcement agency in Indiana, when it is agreed that the information is to be confidential and to be used solely for official purposes.**

~~(g)~~ **(h)** The name and address of retail merchants, including township, as specified in IC 6-2.5-8-1(j) may be released solely for tax collection purposes to township assessors and county assessors.

~~(h)~~ **(i)** The department shall notify the appropriate innkeepers' tax board, bureau, or commission that a taxpayer is delinquent in remitting innkeepers' taxes under IC 6-9.

~~(i)~~ **(j)** All information relating to the delinquency or evasion of the motor vehicle excise tax may be disclosed to the bureau of motor vehicles in Indiana and may be disclosed to another state, if the information is disclosed for the purpose of the enforcement and collection of the taxes imposed by IC 6-6-5.

~~(j)~~ **(k)** All information relating to the delinquency or evasion of commercial vehicle excise taxes payable to the bureau of motor vehicles in Indiana may be disclosed to the bureau and may be disclosed to another state, if the information is disclosed for the purpose of the enforcement and collection of the taxes imposed by IC 6-6-5.5.

~~(k)~~ **(l)** All information relating to the delinquency or evasion of commercial vehicle excise taxes payable under the International Registration Plan may be disclosed to another state, if the information is disclosed for the purpose of the enforcement and collection of the taxes imposed by IC 6-6-5.5.

~~(l)~~ **(m)** This section does not apply to:

- (1) the beer excise tax (IC 7.1-4-2);
- (2) the liquor excise tax (IC 7.1-4-3);
- (3) the wine excise tax (IC 7.1-4-4);
- (4) the hard cider excise tax (IC 7.1-4-4.5);
- (5) the malt excise tax (IC 7.1-4-5);
- (6) the motor vehicle excise tax (IC 6-6-5);
- (7) the commercial vehicle excise tax (IC 6-6-5.5); and
- (8) the fees under IC 13-23.

~~(m)~~ **(n)** The name and business address of retail merchants within each county that sell tobacco products may be released to the division of mental health and addiction and the alcohol and tobacco commission solely for the purpose of the list prepared under IC 6-2.5-6-14.2.

SECTION 19. IC 6-8.1-10-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 3.5. If a person fails to file a return on or before the due date as required by IC 6-3-4-1(1) or IC 6-3-4-1(2), where no**

**remittance is due with the return, the person is subject to a penalty of ten dollars (\$10) per day for each day that the return is past due, up to a maximum of five hundred dollars (\$500).**

SECTION 20. IC 6-8.1-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) If a person makes a tax payment with a check, **credit card, debit card, or electronic funds transfer**, and the department is unable to obtain payment on the check, **credit card, debit card, or electronic funds transfer** for its full face amount when the check, **credit card, debit card, or electronic funds transfer** is presented for payment through normal banking channels, a penalty of ten percent (10%) of the unpaid tax or the ~~face~~ value of the check, **credit card, debit card, or electronic funds transfer**, whichever is smaller, is imposed.

(b) When a penalty is imposed under subsection (a), the department shall notify the person by mail that the check, **credit card, debit card, or electronic funds transfer** was not honored and that the person has ten (10) days after the date the notice is mailed to pay the tax and the penalty either in cash, by certified check, or other guaranteed payment. If the person fails to make the payment within the ten (10) day period, the penalty is increased to one hundred percent (100%) multiplied by the ~~face~~ value of the check, **credit card, debit card, or electronic funds transfer**, or the unpaid tax, whichever is smaller.

(c) If the person subject to the penalty under this section can show that there is reasonable cause for the check, **credit card, debit card, or electronic funds transfer** not being honored, the department may waive the penalty imposed under this section."

Page 10, after line 37, begin a new paragraph and insert:

"SECTION 22. [EFFECTIVE JANUARY 1, 2009] **IC 6-2.5-6-1, as amended by this act, applies to reporting periods beginning after December 31, 2008.**

SECTION 23. [EFFECTIVE JULY 1, 2008] **IC 6-2.5-6-9, as amended by this act, is intended to be a clarification of the law and not a substantive change in the law.**

SECTION 24. [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)] **IC 6-3-3-12, as amended by this act, applies to taxable years beginning after December 31, 2007.**

SECTION 25. [EFFECTIVE JANUARY 1, 2009] **IC 6-3-4-1.5, as amended by this act, applies to adjusted gross income tax returns filed after December 31, 2008.**

SECTION 26. [EFFECTIVE JANUARY 1, 2009] **IC 6-3.1-21-6 and IC 6-5.5-1-2, both as amended by this act, and IC 6-5.5-1-21 and IC 6-8.1-10-3.5, both as added by this act, apply to taxable years beginning after December 31, 2008.**

SECTION 27. **An emergency is declared for this act."**

Renumber all SECTIONS consecutively.

(Reference is to SB 19 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 10, Nays 0.

KENLEY, Chair

Report adopted.

#### COMMITTEE REPORT

Madam President: The Senate Committee on Corrections,

Criminal, and Civil Matters, to which was referred Senate Bill 304, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

Page 3, line 23, after "arrest" insert **"to a noncriminal justice organization or an individual"**.

(Reference is to SB 304 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 6, Nays 0.

STEELE, Chair

Report adopted.

#### COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill 104, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 14-28-1-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 24. (a) This section does not apply to the reconstruction of a residence located in a boundary river floodway.

(b) A person may not begin the reconstruction of an abode or a residence that ~~(1)~~ is located in a floodway and ~~(2)~~ is substantially damaged (as defined in 44 CFR 59.1, as in effect on January 1, 1993) ~~by a means other than floodwater~~; unless the person has:

(1) obtained a permit under this section or section 26.5 of this chapter; or

(2) **demonstrated to the department through the submission of material facts, plans, and specifications that the material used to elevate the reconstructed abode or residence:**

(A) **does not extend beyond the original foundation of the abode or residence; and**

(B) **meets the criteria set forth in subsection (d)(2) through (d)(7).**

(c) A person who desires to reconstruct an abode or a residence ~~described in subsection (b)~~ **that does not meet the requirements under subsection (b)(2)** must file with the director a verified written application for a permit accompanied by a nonrefundable fee of fifty dollars (\$50). An application submitted under this section must do the following:

(1) Set forth the material facts concerning the proposed reconstruction.

(2) Include the plans and specifications for the reconstruction.

(d) The director may issue a permit to an applicant under this section only if the applicant has clearly proven all of the following:

(1) The abode or residence will be reconstructed:

(A) in the area of the original foundation and in substantially the same configuration as the former abode

or residence; or

(B) in a location that is, as determined by the director, safer than the location of the original foundation.

(2) The lowest floor elevation of the abode or residence as reconstructed, including the basement, will be at ~~or least~~ **two (2) feet** above the one hundred (100) year flood elevation.

(3) The abode or residence will be designed or modified and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(4) The abode or residence will be reconstructed with materials resistant to flood damage.

(5) The abode or residence will be reconstructed by methods and practices that minimize flood damages.

(6) The abode or residence will be reconstructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and located to prevent water from entering or accumulating within the components during conditions of flooding.

(7) The abode or residence, as reconstructed, will comply with the minimum requirements for floodplain management set forth in 44 CFR Part 60, as in effect on January 1, 1993.

(e) When granting a permit under this section, the director may establish and incorporate into the permit certain conditions and restrictions that the director considers necessary for the purposes of this chapter.

(f) A permit issued by the director under this section is void if the reconstruction authorized by the permit is not commenced within two (2) years after the permit is issued.

(g) The director shall send a copy of each permit issued under this section to each river basin commission organized under:

(1) IC 14-29-7 or IC 13-2-27 (before its repeal); or

(2) IC 14-30-1 or IC 36-7-6 (before its repeal);

that is affected by the permit.

(h) The person to whom a permit is issued under this section shall post and maintain the permit at the site of the reconstruction authorized by the permit.

(i) A person who knowingly:

(1) begins the reconstruction of an abode or a residence in violation of subsection (b);

(2) violates a condition or restriction of a permit issued under this section; or

(3) fails to post and maintain a permit at a reconstruction site in violation of subsection (h);

commits a Class B infraction. Each day that the person is in violation of subsection (b), the permit, or subsection (h) constitutes a separate infraction.

SECTION 2. IC 14-28-1-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 25. (a) A person who desires to reconstruct an abode or a residence that:

(1) is located in a floodway; and

(2) is not substantially damaged (as defined in 44 CFR 59.1, as in effect on January 1, 1997); ~~by a means other than floodwater~~;

is not required to obtain a permit from the department for the

reconstruction of the abode or residence if the reconstruction will meet the requirements set forth in 44 CFR Part 60, as in effect on January 1, 1997.

(b) A person who knowingly reconstructs an abode or a residence described in subsection (a) in a way that does not comply with the requirements referred to in subsection (a) commits a Class B infraction.

SECTION 3. IC 14-28-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. The administrative control of the fund and the responsibility for the administration of this chapter ~~are~~ is vested ~~jointly in the state board of finance and in the commission.~~ The commission may do the following:

(1) ~~Subject to the approval of the state board of finance;~~ Adopt rules under IC 4-22-2 that are considered necessary by ~~the state board of finance and~~ the commission for the proper administration of the fund and this chapter.

(2) Subject to the approval of the budget committee, employ the personnel that are necessary for the efficient administration of this chapter.

SECTION 4. IC 14-28-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. (a) The commission may ~~subject to the final approval of the state board of finance;~~ order the auditor of state to make an approved loan from the fund to a local unit. The money loaned is to be used by the local unit for the purpose of instituting, accomplishing, and administering an approved flood control program.

(b) The total amount outstanding under loans made under:

(1) this chapter; and

(2) IC 13-2-23 (before its repeal);

to one (1) local unit may not exceed three hundred thousand dollars (\$300,000).

SECTION 5. IC 14-28-5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. A local unit may institute, accomplish, and administer a flood control program if the following conditions are met:

(1) The program is authorized and approved by ordinance or resolution enacted by the governing board of the local unit.

(2) The flood control program has been approved by ~~the state board of finance and~~ the commission.

SECTION 6. IC 14-28-5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. The ~~state board of finance and the~~ commission shall authorize the making of a loan to a local unit under this chapter only when the following conditions exist:

(1) An application for the loan has been submitted by the local unit in a verified petition to ~~the state board of finance and~~ the commission in the manner and form that ~~the state board of finance and the commission direct.~~ **directs.** The application must state the following:

(A) The need for the flood control program and the need for money for instituting, accomplishing, and administering the program.

(B) A detailed description of the program.

(C) An engineering estimate of the cost of the proposed program acceptable to ~~the state board of finance and the~~ commission.

(D) The amount of money considered to be needed.

(E) Other information that is requested by ~~the state board of finance and~~ the commission.

(2) There is a need, as determined by ~~the state board of finance and~~ the commission, for the proposed flood control program for the purpose of protecting the health, safety, and general welfare of the inhabitants of the local unit.

(3) The proposed flood control program has been approved by ~~the state board of finance and~~ the commission, if before granting the approval, ~~the state board of finance and~~ the commission determine the following:

(A) That the program:

(i) is based upon sound engineering principles;

(ii) is in the interest of flood control; and

(iii) will accomplish the objectives of flood control.

(B) That for flood control programs involving the reconstruction or repair of existing flood control works that:

(i) in the judgment of ~~the state board of finance and the commission,~~ ~~constitute~~ **constitutes** an unreasonable obstruction or impediment to the proper discharge of flood flows; or

(ii) by virtue of their nature, location, or design, are subject to frequent damage or destruction;

approval is limited to the work that is necessary to afford emergency protection against actual or threatened damage to life and property.

(4) The local unit agrees and furnishes assurance, satisfactory to ~~the state board of finance and~~ the commission, that the local unit will operate and maintain the flood control program, after completion, in a satisfactory manner.

SECTION 7. IC 14-28-5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. (a) The local unit may:

(1) do work; and

(2) provide labor, equipment, and materials from any source at the local unit's disposal;

for the flood control program.

(b) The ~~state board of finance and the~~ commission may do the following:

(1) Evaluate the participation of the local unit in the accomplishment of the project.

(2) Compute the participation as a part or all of the share of cost that the local unit is required to pay toward the total cost of the project for which the loan from the fund is obtained.

(c) Participation authorized under this section must be under the direction of the governing board.

(d) If cash amounts are included in the local unit's share of total cost, the amounts shall be provided in the usual and accepted manner for the financing of the affairs of the local unit.

(e) Costs of engineering and legal services to the borrower may be regarded as a part of the total cost of the project.

SECTION 8. IC 14-28-5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 11. (a) The ~~state board of finance and the~~ commission shall determine and ascribe to each applicant for a loan a priority rating. The rating must be



based primarily on the need of the local unit for the proposed flood control program as the need is related to the needs of other applicants for loans. Except as provided in subsection (b):

- (1) the local units having the highest priority rating shall be given first consideration in making loans under this chapter; and
- (2) loans shall be made in descending order as shown by the priority ratings.

(b) If an emergency demands immediate relief from actual or threatened flood damage, the application made by a local unit for a loan may be considered regardless of a previous priority rating ascribed to the applicant.

SECTION 9. IC 14-28-5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 14. If a local unit fails to make a payment to the fund or any other payment required by this chapter or under IC 13-2-23 (before its repeal) or is in any way indebted to the fund for an amount incurred or accrued, the state may recover the amount through any of the following:

- (1) The state may, through the attorney general and on behalf of ~~the state board of finance and~~ the commission, file a suit in the circuit or a superior court with jurisdiction in the county in which the local unit is located to recover the amount that the local unit owes the fund.
- (2) The auditor of state may, after a sixty (60) day written notice to the local unit, withhold the payment and distribution of state money that the defaulting local unit is entitled to receive under Indiana law.
- (3) For a special taxing district, upon certification by the auditor of state after a sixty (60) day written notice to the special taxing district, the auditor of each county containing land within the special taxing district shall withhold collected tax money for the special taxing district and remit the withheld tax money to the auditor of state. The auditor of state shall make a payment to the fund in the name of the special taxing district. Upon elimination of the delinquency payment, the auditor of state shall certify the fact to the auditors of the counties involved and any additional withheld tax money shall be released to the special taxing district.

(Reference is to SB 104 as introduced.)

and when so amended that said bill be reassigned to the Senate Committee on Utilities and Regulatory Affairs.

LONG, Chair

Report adopted.

#### COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill 243, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 8-1-14.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

#### **Chapter 14.5. Tree Cutting Activity by Electric Utilities**

**Sec. 1. (a)** As used in this chapter, "affected property owner" means the record owner of real property on which a utility plans to perform tree cutting activity.

**(b)** The term does not include a property owner that is a governmental unit.

**Sec. 2. As used in this chapter, "tree cutting activity" means:**

- (1)** the trimming or pruning of one (1) or more trees; or
- (2)** the cutting down and removal of one (1) or more trees.

**Sec. 3. As used in this chapter, "utility" refers to any of the following:**

- (1)** A public utility (as defined in IC 8-1-2-1(a)).
- (2)** A municipally owned utility (as defined in IC 8-1-2-1(h)).
- (3)** A corporation organized under IC 8-1-13.
- (4)** A corporation organized under IC 23-17 that:
  - (A)** is an electric cooperative; and
  - (B)** has at least one (1) member that is a corporation organized under IC 8-1-13.

**Sec. 4. In performing any tree cutting activity, a utility shall follow the tree care and maintenance standard practices set forth by the American National Standards Institute (ANSI).**

**Sec. 5. (a)** Not later than November 1, 2008, a utility shall establish written policies:

- (1)** providing dispute resolution procedures for affected property owners; and
- (2)** describing other rights and remedies, if any, that the utility provides to affected property owners.

**(b)** The policies required under subsection (a)(1) must provide that an affected property owner is entitled to appeal to the commission any resolution of a case reached through the utility's dispute resolution procedures.

**(c)** Not later than December 1, 2008, a utility shall make the policies established under subsection (a) available to the public through the following means:

- (1)** A written copy of the policies shall be kept on file and made open to public inspection in every station or office of the utility where payments may be made by customers.
- (2)** The policies must be included in the informational pamphlet the utility is required to provide to customers under 170 IAC 4-1-18.
- (3)** The utility shall provide an electronic copy of the policies to the commission. The commission shall make all policies submitted under this subdivision available:
  - (A)** for public inspection and copying at the offices of the commission under IC 5-14-3; and
  - (B)** electronically through the computer gateway administered by the office of technology established by IC 4-13.1-2-1.
- (4)** The policies shall be available on a publicly accessible web site of the utility.

(5) The policies shall be available through an option to a caller of a toll free telephone number established by the utility. The toll free telephone number required by this subdivision must also provide an option allowing the caller to speak with a representative of the utility.

(d) The policies established by a utility under this section shall take effect on January 1, 2009.

Sec. 6. (a) Except as provided in section 9 of this chapter, not more than ninety (90) days before or less than twenty-one (21) days before performing any tree cutting activity planned to occur after December 31, 2008, a utility shall send notice by United States mail of the planned tree cutting activity to the following:

(1) The municipal executive of a municipality in which any part of the tree cutting activity will occur.

(2) If any part of the tree cutting activity will occur in an unincorporated area of a county, the county executive.

(b) The notice required in subsection (a) must include:

(1) maps;

(2) a description by street address, if any; or

(3) another common description;

of the area to be affected by the tree cutting activity. The municipal or county executive shall keep on file and make open for public inspection the materials received under this subsection.

Sec. 7. (a) Except as provided in section 9 of this chapter, not more than ninety (90) days before or less than twenty-one (21) days before performing any tree cutting activity planned to occur after December 31, 2008, a utility shall provide the following notice of the planned tree cutting activity to affected property owners:

(1) Notice by publication in one (1) newspaper of general circulation in the municipality or county where the tree cutting activity will occur. The notice required by this subdivision must include a description by street address, if any, or other common description of the area to be affected by the tree cutting activity.

(2) Notice by United States mail to each affected property owner. The notice required by this subdivision must include the following:

(A) A statement of the tree cutting activity planned.

(B) A statement that the written policies required by section 5(a) of this chapter are available for public inspection in the public offices of the utility and the office of the commission, as required by section 5(c) of this chapter.

(C) The web site address of:

(i) the utility; and

(ii) the commission;

at which the policies required by section 5(a) of this chapter may be viewed, as required by section 5(c) of this chapter.

(D) The toll free telephone number required by section 5(c) of this chapter.

(E) A statement that an affected property owner may appeal the planned tree cutting activity through the dispute resolution procedures of the utility. The

statement required by this clause must inform the affected property owner of the right to appeal to the commission any resolution reached through the utility's procedures.

(F) A publicly accessible:

(i) toll free telephone number; and

(ii) web site address;

for the office of utility consumer counselor.

(G) A statement that maps, a description by street address, or another common description of the affected area is available for public inspection in the office of the county or municipal executive, as required by section 6(b) of this chapter.

(b) The duty of a utility to provide notice under subsection (a)(2) requires the utility to notify only affected property owners. If a person other than the affected property owner resides on an affected parcel of land, it is the responsibility of the affected property owner to notify the resident of the planned tree cutting activity. A utility does not have a duty to extend any rights, remedies, or policies established under section 5 of this chapter to a resident who is not an affected property owner.

Sec. 8. (a) If an affected property owner wishes to appeal the planned tree cutting activity described in the notice required under section 7(a)(2) of this chapter, the affected property owner must initiate the dispute resolution procedures provided by the utility not later than fourteen (14) days after receiving the notice.

(b) Except as provided in section 9 of this chapter, if an affected property owner has initiated dispute resolution procedures under subsection (a), a utility may not perform any tree cutting activity on the affected property owner's property while the dispute resolution procedures are pending. If the affected property owner wishes to appeal the resolution of the case reached through the utility's dispute resolution procedures, the affected property owner must:

(1) initiate an appeal with the commission; and

(2) notify the utility of the appeal;

not later than ten (10) days after the date of the case's resolution. If the utility does not receive notice of an appeal within the time prescribed in this subsection, the utility may begin the planned tree cutting activity, subject to any specifications or limitations reached through the dispute resolution procedures.

(c) Except as provided in section 9 of this chapter, if a utility receives notice of an appeal to the commission within the time prescribed in subsection (b), a utility may not perform any tree cutting activity on the affected property owner's property while the appeal is pending.

Sec. 9. A utility is exempt from the requirements of sections 6, 7, and 8 of this chapter if:

(1) in response to an emergency, the commission acts under IC 8-1-2-113 to temporarily alter, suspend, or amend the policies adopted by the utility under section 5(a) of this chapter; or

(2) the utility determines that an emergency exists that requires the utility to undertake immediate action that includes tree cutting activity in order to:

- (A) prevent endangerment to life or property; or
- (B) ensure the safety, reliability, or power quality of the utility's electric distribution system; subject to verification by the commission.

**Sec. 10. (a)** The commission has the sole authority to hear and determine complaints that a utility has failed to comply with this chapter.

**(b)** The commission may adopt rules under IC 4-22-2 to implement this chapter.

SECTION 2. IC 8-20-1-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 28. Public and municipally owned utilities are authorized to construct, operate, and maintain their poles, facilities, appliances, and fixtures upon, along, under, and across any of the public roads, highways, and waters outside of municipalities, as long as they do not interfere with the ordinary and normal public use of the roadway, as defined in IC 9-13-2-157. However, the utility shall review its plans with the county executive before locating the pole, facility, appliance, or fixture. **Subject to the requirements of IC 8-1-14.5**, the utility may trim any tree along the road or highway, but may not cut down and remove the tree without the consent of the abutting property owners, unless the cutting or removal is required by rule or order of the Indiana utility regulatory commission. The utility may not locate a pole where it interferes with the ingress or egress from adjoining land.

SECTION 3. [EFFECTIVE UPON PASSAGE] **(a)** As used in this SECTION, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

**(b)** The commission may adopt any rules necessary to implement IC 8-1-14.5, as added by this act, in the same manner as emergency rules are adopted under IC 4-22-2-37.1. Any rules adopted under this SECTION must be adopted not later than September 1, 2008. A rule adopted under this SECTION expires on the earlier of:

- (1) the date the rule is adopted by the authority under IC 4-22-2-24 through IC 4-22-2-36; or
- (2) January 1, 2010.

**(c)** This SECTION expires January 1, 2010.

SECTION 4. An emergency is declared for this act.

(Reference is to SB 243 as introduced.)

and when so amended that said bill be reassigned to the Senate Committee on Utilities and Regulatory Affairs.

LONG, Chair

Report adopted.

#### COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill 254, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 4-23-29 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

#### Chapter 29. Indiana 2016 Bicentennial Commission

**Sec. 1.** As used in this chapter, "account" refers to the Indiana 2016 bicentennial commission account established by section 9 of this chapter.

**Sec. 2.** As used in this chapter, "bicentennial" refers to the bicentennial of Indiana's statehood.

**Sec. 3.** As used in this chapter, "commission" refers to the Indiana 2016 bicentennial commission established by section 5 of this chapter.

**Sec. 4.** As used in this chapter, "communities" includes the following:

- (1) Regions.
- (2) Counties.
- (3) Neighborhoods.
- (4) Organizations.
- (5) Cities.
- (6) Towns.
- (7) Families.

**Sec. 5. (a)** The Indiana 2016 bicentennial commission is established.

**(b)** The commission consists of the following twenty-five (25) members:

- (1) Two (2) members of the house of representatives, to be appointed by the governor on the recommendation from the speaker of the house of representatives. The two (2) members appointed under this subdivision may not be of the same political party.
- (2) Two (2) members of the senate, to be appointed by the governor on the recommendation from the president pro tempore of the senate. The two (2) members appointed under this subdivision may not be of the same political party.
- (3) The governor or the governor's designee.
- (4) The director of the department of natural resources or the director's designee.
- (5) The director of the commission on community service and volunteerism or the director's designee.
- (6) One (1) employee of the department of commerce with expertise in community development or tourism, appointed by the lieutenant governor.
- (7) The following members appointed by the governor:
  - (A) One (1) mayor.
  - (B) One (1) representative of the Indiana historical society.
  - (C) One (1) representative of the Indiana historical bureau.
  - (D) One (1) representative from the Indiana arts commission.
  - (E) One (1) representative from the humanities council.
  - (F) One (1) representative of Indiana's technology sector.
  - (G) One (1) member from a postsecondary educational institution.
  - (H) One (1) member from an elementary or a secondary school.
  - (I) One (1) member from each of the state's congressional districts.

(c) The governor or the governor's designee shall act as the chairperson of the commission.

(d) Each appointed member of the commission is appointed to a term of four (4) years or until a successor is appointed. However, the term of a member appointed under subsection (a)(1) or (a)(2) terminates if the member ceases to be a member of the house of representatives or the senate. Members may be appointed to an unlimited number of terms.

(e) Each member of the commission who is a member of the general assembly is a nonvoting member.

(f) The affirmative votes of a majority of the voting members appointed to the commission are required for the commission to take action on any measure, including final reports.

**Sec. 6. The commission shall do the following:**

(1) Encourage all communities and individuals to consider the following:

(A) Indiana's past, including:

- (i) milestones leading to Indiana's statehood on December 11, 1816; and
- (ii) events that have brought Indiana to its current status.

(B) the current situation of:

- (i) individual residents;
- (ii) communities; and
- (iii) the state.

(C) Indiana's vision for the future, with particular attention to 2016, which is the bicentennial year.

(D) Means of achieving Indiana's vision for the future.

(2) Raise an awareness of and promote and encourage the active involvement of all citizens of Indiana in strengthening:

- (A) local;
- (B) state;
- (C) national; and
- (D) global;

communities for the future.

(3) Celebrate achievements of citizens of Indiana.

(4) Recognize and initiate projects that engage every sector of society in recognizing and conveying the strengths of Indiana's rich heritage and promising future.

(5) Make communities aware of the availability of assistance for obtaining grant applications for Indiana 2016 bicentennial projects.

(6) Encourage communities to develop programs dealing with:

- (A) health;
- (B) the environment;
- (C) human services;
- (D) education;
- (E) habitation; and
- (F) other sectors;

that will prepare residents of Indiana of all ages, backgrounds, and interests for life and growth into

Indiana's third century of statehood.

(7) Raise awareness of:

- (A) economic;
- (B) technologic;
- (C) historic;
- (D) artistic; and
- (E) cultural resources.

(8) Encourage opportunities or initiatives that allow better preservation of Indiana's legacy.

(9) Recognize Indiana's cultural richness and diversity today and in the future.

(10) Encourage cooperation and collaboration among:

- (A) public;
- (B) private; and
- (C) nonprofit;

entities.

(11) Plan and implement appropriate events to mark the Indiana 2016 bicentennial in ways that engage and stimulate the residents of Indiana.

(12) Seek federal grants and philanthropic support for Indiana 2016 bicentennial programs.

(13) Annually report the commission's progress, activities, and recommendations to the governor and the legislative council. The report to the legislative council must be in an electronic format under IC 5-14-6.

**Sec. 7. All state departments, agencies, boards, commissions, and officers of the state shall cooperate with the commission and provide incentives, including:**

- (1) grants;
- (2) staff support; or
- (3) financial assistance;

to assist the commission in the development and performance of the commission's duties.

**Sec. 8. The expenses of the commission shall be paid from:**

- (1) appropriations to the department of workforce development for the commission;
- (2) donations received by the governor's Hoosier Heritage Foundation to assist the commission;
- (3) donations from a nonprofit corporation; and
- (4) other donations, gifts, and bequests, and in-kind contributions;

designated for the purpose of furthering the Indiana 2016 bicentennial celebration.

**Sec. 9. (a) The Indiana 2016 bicentennial commission account is created within the state general fund for the purpose of receiving grants, gifts, bequests, or contributions for the Indiana 2016 bicentennial celebration. The account shall be administered by the department of workforce development.**

(b) The expenses of administering the account shall be paid from money in the account.

(c) The treasurer of state shall invest the money in the account not currently needed to meet the obligations of the account in the same manner as other public money may be invested. Interest that accrues from the investments shall be deposited in the account.

(d) Money in the account does not revert to the state general fund at the close of a fiscal year but remains available for use by the commission.

(e) Notwithstanding subsection (d), the balance of the account on June 30, 2017, reverts to the state general fund, and the account expires on that date.

(f) Money in the account is annually appropriated to the department of workforce development for its use in administering the Indiana 2016 bicentennial commission.

(g) Appropriations made from the state general fund to the department of workforce development are not part of the account.

**Sec. 10. (a) Contracts entered into for the purchase or sale of any material or supplies or for the performance of work or labor paid for with money appropriated by the general assembly are subject to IC 5-22.**

**(b) Contracts entered into for the purchase or sale of any material or supplies or for the performance of work or labor paid for with money from the account are not subject to IC 5-22.**

**Sec. 11. Each member of the commission who is not a state employee is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is, however, entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.**

**Sec. 12. Each member of the commission who is a state employee but who is not a member of the general assembly is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.**

**Sec. 13. Each member of the commission who is a member of the general assembly is entitled to receive the same per diem, mileage, and travel allowances paid to legislative members of interim study committees established by the legislative council. Per diem, mileage, and travel allowances paid under this subsection shall be paid from appropriations made to the legislative council or the legislative services agency.**

**Sec. 14. This chapter expires June 30, 2017.**

**SECTION 2. [EFFECTIVE JULY 1, 2008] (a) The initial terms of office for the nonlegislator members appointed to the Indiana 2016 bicentennial commission under IC 4-23-29, as added by this act, are as follows:**

**(1) Nine (9) members for a term of four (4) years.**

**(2) Nine (9) members for a term of two (2) years.**

**(b) This SECTION expires June 30, 2010.**

(Reference is to SB 254 as introduced.)

and when so amended that said bill be reassigned to the Senate Committee on Commerce, Public Policy, and Interstate

Cooperation.

LONG, Chair

Report adopted.

#### MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has passed Senate Concurrent Resolution 5 and the same is herewith returned to the Senate.

CLINTON MCKAY  
Principal Clerk of the House

#### SENATE MOTION

Madam President: I move that Senator Long be removed as author of Senate Bill 104 and that Senator Hershman be substituted therefor.

LONG

Motion prevailed.

#### SENATE MOTION

Madam President: I move that Senator R. Young be removed as author of Senate Bill 243 and that Senator Breaux be substituted therefor.

R. YOUNG

Motion prevailed.

#### SENATE MOTION

Madam President: I move that Senator Smith be added as coauthor of Senate Bill 331.

MISHLER

Motion prevailed.

#### SENATE MOTION

Madam President: I move that Senator Hume be added as coauthor of Senate Bill 133.

MEEKS

Motion prevailed.

#### SENATE MOTION

Madam President: I move that Senator Sipes be added as second author of Senate Bill 262.

HUME

Motion prevailed.

#### SENATE MOTION

Madam President: I move we adjourn until 1:30 p.m., Thursday, January 17, 2008.

HERSHMAN

Motion prevailed.

The Senate adjourned at 2:38 p.m.

MARY C. MENDEL  
Secretary of the Senate

REBECCA S. SKILLMAN  
President of the Senate